

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ASUNCION SANCHEZ,	§
	§ No. 121, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0308006394
	§
Plaintiff Below-	§
Appellee.	§

Submitted: April 6, 2010

Decided: May 11, 2010

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 11th day of May 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Asuncion Sanchez, filed an appeal from the Superior Court's February 19, 2010 order adopting the report of the Superior Court Commissioner, which recommended that Sanchez' second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.¹ The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the

¹ Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62.

face of the opening brief that the appeal is without merit.² We agree and affirm.

(2) In April 2004, Sanchez pleaded guilty to Murder in the Second Degree as a lesser-included offense of Murder in the First Degree. Additional charges of Possession of a Deadly Weapon During the Commission of a Felony and Conspiracy in the First Degree were dismissed. Sanchez was sentenced to 20 years of incarceration at Level V, to be suspended after 18 years for probation. Sanchez did not file a direct appeal from his conviction.

(3) In this appeal, Sanchez claims that his counsel provided ineffective assistance by a) failing to investigate alternative avenues of relief prior to the entry of his guilty plea; and b) failing to file a direct appeal or inform him of his right to file a direct appeal.

(4) Sanchez' first claim is that his counsel failed to investigate alternative avenues of relief prior to the entry of his guilty plea. The record before us reflects that, at the April 2004 guilty plea hearing, the Superior Court engaged in a thorough discussion with Sanchez regarding the consequences of his decision to plead guilty. As confirmed by the TIS guilty plea form, which was provided to Sanchez in Spanish, and Sanchez'

² Supr. Ct. R. 25(a).

plea colloquy, in which he stated that his attorney had not coerced him into a guilty plea and that he was satisfied with his attorney's performance, Sanchez knowingly and voluntarily pleaded guilty to Murder in the Second Degree. In the absence of clear and convincing evidence to the contrary, Sanchez is bound by the representations he made during his plea colloquy.³ Moreover, by knowingly and voluntarily entering his guilty plea, Sanchez waived his right to challenge any alleged errors, even those of a constitutional dimension, occurring prior to the entry of the plea.⁴ We, therefore, conclude that Sanchez' first claim is without merit.

(5) Sanchez' second claim is that his attorney failed to advise him of his right to file a direct appeal. On a claim of ineffective assistance of counsel within the context of a guilty plea, a defendant must demonstrate that a) his counsel's representation fell below an objective standard of reasonableness; and b) but for his counsel's errors, he would not have pleaded guilty, but would have insisted on proceeding to trial.⁵ Sanchez has provided no factual support for a claim of error on the part of his counsel that was prejudicial to him. To the contrary, Sanchez received a significant benefit by pleading guilty and his guilty plea represented a rational choice

³ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

⁴ *Id.* at 631.

⁵ *Albury v. State*, 551 A.2d 53, 58-59 (Del. 1988).

given the charges and possible sentences he was facing. As such, even if Sanchez had filed a direct appeal alleging that his counsel provided ineffective assistance in connection with his guilty plea, any such claims would have been unavailing. We, therefore, conclude that Sanchez' second claim also is without merit.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice